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Attorneys for Defendant  
SENORX, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

	)	Case No. C08-00133-MEJ
HOLOGIC INC.,	)	
CYTYC CORP., and	)	<b>DEFENDANT SENORX, INC.'S</b>
HOLOGIC L.P.,	)	<b>NOTICE OF MOTION AND</b>
	)	<b>MOTION FOR A CONTINUANCE</b>
Plaintiffs,	)	<b>OF THE HEARING ON</b>
v.	)	<b>PLAINTIFFS' PRELIMINARY</b>
	)	<b>INJUNCTION MOTION IN</b>
SENORX, INC.,	)	<b>ORDER TO PERMIT EXPEDITED</b>
	)	<b>DISCOVERY</b>
Defendant.	)	

Pursuant to Civil Local Rules 6-1(b), 6-3, and 7-11, Defendant SenoRx Inc. ("SenoRx") hereby moves this Court for an order continuing the hearing on Hologic Inc., Cytoc Corp., and Hologic L.P.'s ("Hologic" or "Plaintiffs") Motion for Preliminary Injunction until at least May 12, 2008, with a corresponding briefing schedule to allow for the parties to take expedited discovery pursuant to Fed. R. Civ. P. 26(d). A Proposed Order is attached. This Motion is based on the following Memorandum of Points and Authorities, the declaration of Aaron P. Maurer, all matters of which this Court may take judicial notice, and the arguments of SenoRx's counsel.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

SenoRx markets a device used in the treatment of breast cancer, called the Contura™ MLB Applicator ("Contura™"). The U.S. Food and Drug Administration ("FDA") gave SenoRx approval to market the Contura™ device on May 18, 2007, which SenoRx announced in a press release on May 23, 2007. *See* Ex. N to Hologic's Motion for a Preliminary Injunction. The Section 510(k) premarket notification summary for the Contura™ device (attached as Ex. A to Hologic's Motion) was released to the public shortly thereafter<sup>1</sup> and provided a "[d]evice description" of the Contura™ device. Hologic cites that same May 18, 2007 510(k) summary "[d]evice description" eight times in its infringement contentions for the two claims at issue in its Motion for a Preliminary Injunction. In the press release on May 23, 2007, SenoRx announced that the "[f]ull launch of the Radiation Balloon product is expected in early 2008," and that "[t]he company expects to ship product for post-FDA clearance human clinical trials supporting marketing claims . . . in the second half of 2007." *See* Ex. N to Hologic's Motion for a Preliminary Injunction. The 2007 trials were accomplished with Contura™ devices that were sold commercially on the market, and SenoRx announced those first commercial sales in August

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<sup>1</sup> The FDA website states that "[l]istings are normally available about the 5th of each month for the prior month. Summaries are in pdf format and are available about 3 weeks after the monthly listing is posted." FDA, *Information on Releasable 510(k)s*, <http://www.fda.gov/cdrh/510khome.html>. It is SenoRx's understanding and belief that, in accordance with the FDA's website, the 510(k) summary for the Contura™ device (then called the "SenoRad applicator") was available by approximately July 2007.

1 2007. *See* Declaration of Aaron P. Maurer in Support of Defendant's Motion for a Continuance  
2 of the Hearing on Plaintiffs' Motion for Preliminary Injunction in Order to Permit Expedited  
3 Discovery ("Maurer Decl.") Ex. B, Press Release, *SenoRx Reports Second Quarter 2007 Results*  
4 (Aug. 14, 2007) ("[M]ajor milestones were achieved during the second quarter with the FDA  
5 510(k) clearance of our new Radiation Balloon and our first commercial sales of this product.").

6 Nevertheless, Hologic waited until January 8, 2008 to file its claims of patent  
7 infringement against SenoRx. No motion for a preliminary injunction was filed at that time. On  
8 or about January 23, 2008, SenoRx's counsel requested a 30-day extension to answer the  
9 Complaint, which Hologic granted. *See* Maurer Decl. ¶ 3. In granting this extension Hologic  
10 made no mention of its preparation of and plans to file a motion for preliminary injunction,  
11 despite counsel for SenoRx specifically citing as one reason for the extension his preparation for  
12 an impending trial. *Id.* ¶¶ 4-5.

13 On February 6, 2008, approximately eight months after the 510(k) approval, SenoRx's  
14 first commercial sales, and the press release regarding its forthcoming full commercial launch,  
15 Hologic filed the instant Motion for a Preliminary Injunction, timed at the height of SenoRx's  
16 full commercial launch activities. Under the current schedule, SenoRx's opposition to Hologic's  
17 motion is due on February 28, 2008, and a hearing is requested for March 20, 2008. *See* Civil  
18 L.R. 7-2 & 7-3.

19 Counsel for SenoRx contacted Plaintiffs' counsel and attempted to agree on an extension  
20 of the briefing schedule and an expedited discovery procedure without the Court's involvement.  
21 *See* Maurer Decl. ¶ 7. SenoRx proposed an expedited schedule with some limited discovery as  
22 to certain key issues, with a hearing sometime during the first or second week of May (if the  
23 Court's schedule allowed). *Id.* ¶ 8. Hologic countered with a hearing date of April 17, 2008,  
24 and extremely limited discovery, *i.e.*, six interrogatories, ten document requests, and two  
25 depositions (one of Hologic's Senior Director of Product Marketing, and one of a corporate  
26 designee). *Id.* ¶¶ 9-10. Hologic also placed unreasonable restrictions on who could access its  
27 pleadings filed under seal, which has hampered SenoRx's ability to defend against the  
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1 preliminary injunction in a timely manner. *See* Maurer Decl., Ex. A, Email Chain between  
2 Aaron P. Maurer and Marc Cohn.

3         Given the nature of the motion and the schedule of SenoRx's lead counsel, who starts a  
4 two-week patent trial in Wilmington, Delaware on February 25, 2008, Hologic's  
5 counterproposal provides neither sufficient time nor sufficient discovery to examine Hologic's  
6 contentions and create a factual record on which the Court can decide Hologic's motion.  
7 Because SenoRx would be prejudiced by the current schedule, it had no choice but to file this  
8 motion respectfully requesting that this Court continue the hearing on Hologic's preliminary  
9 injunction motion until a time it determines to be appropriate, and order a reasonable amount of  
10 expedited discovery.

## 11 **II. ARGUMENT**

### 12 **A. Expedited Discovery is Necessary in This Case**

13         Expedited discovery is available under Fed. R. Civ. P. 26(d) upon a showing of good  
14 cause. *See Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002)  
15 (applying the "standard of good cause in evaluating Plaintiff's request for expedited discovery").  
16 Such "expedited discovery is particularly appropriate when a plaintiff seeks injunctive relief  
17 because of the expedited nature of injunctive proceedings." *Ellsworth Assocs., Inc. v. United*  
18 *States*, 917 F. Supp. 841, 844 (D.D.C. 1996). In those cases, the expedited discovery "better  
19 enable[s] the court to judge the parties' interest and respective chances for success on the merits  
20 at a preliminary injunction hearing." *Yokohama Tire Corp. v. Dealers Tire Supply, Inc.*, 202  
21 F.R.D. 612, 613 (D. Ariz. 2001) (internal quotation omitted); *see also Verigy US, Inc. v.*  
22 *Mayder*, No. C07-04330-RMW, 2007 WL 2429652 (N.D. Cal. Aug 24, 2007) (Whyte, J.)  
23 (ordering expedited discovery in advance of a preliminary injunction hearing).

24         Good cause for expedited discovery certainly exists in this case. By filing a preliminary  
25 injunction motion and refusing to allow a reasonable extension and discovery, Hologic has  
26 hamstrung SenoRx's ability to defend against Hologic's patent claims. As opposed to SenoRx,  
27 Hologic has litigated two of the patents-in-suit at length before this Court in *Xoft Microtube Inc.*  
28 *v. Cytyc Corp.* (No. 5:05-cv-05312-RMW). Although Hologic has intimate knowledge of that

1 case, SenoRx has not yet even been able to access all of the pleadings (a number are filed under  
2 seal). *See* Maurer Decl., Ex. A. Hologic also, of course, has all of the information relating to  
3 the patents internally accessible, and had approximately eight months to prepare its case here.

4 SenoRx's preparation of its case, on the other hand, is just beginning, and there are many  
5 complex issues that require investigation before SenoRx can prepare its defenses and create an  
6 adequate record for the Court to decide Hologic's motion. For example, on the question of  
7 likelihood of success on the merits, SenoRx must be allowed to develop not just its non-  
8 infringement defenses, but also an understanding of the prior art (which was not discussed at all  
9 in Hologic's motion) and of the prosecution of the patents. These questions commonly require  
10 expert testimony, which may be appropriate in this case, with the need for some time to retain  
11 such experts and obtain their opinions on the key issues. With respect to the other factors for  
12 injunctive relief Hologic discusses in its motion – *e.g.*, irreparable harm, balance of harms,  
13 ability to monetarily compensate for any infringement, market determinations – SenoRx needs  
14 time and discovery (and again, possibly expert discovery) to formulate a proper response. For  
15 instance, Xoft, a party in the prior Hologic lawsuit on two of the patents at issue here, apparently  
16 is selling its balloon catheter on the market, but under what terms and in what relation to the  
17 patents-in-suit, SenoRx does not know. Indeed, Hologic has not yet taken a position as to how  
18 its own device falls under the patents' claims, and what are the relevant conception dates of its  
19 patent claims. The limited discovery proposed by Hologic will not allow sufficient development  
20 of these and other relevant issues. A broader scope of discovery is needed in order for SenoRx  
21 to respond fully to Hologic's motion for a preliminary injunction.

22 **B. A Continuance of the Preliminary Injunction Hearing Date is also Necessary**

23 Given the need for discovery in this case prior to a preliminary injunction hearing,  
24 SenoRx respectfully requests that this Court continue the hearing on Hologic's motion until at  
25 least May 12, 2008, with a corresponding briefing schedule. As explained above, the extension  
26 is necessary to allow for discovery on the merits regarding each of the four factors relevant to  
27 injunctive relief. Additionally, SenoRx's lead counsel has another trial scheduled from late  
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1 February through early March 2008. This schedule makes it even more difficult to carry out the  
2 extensive and complex investigation required here on the existing timeline.

3 Hologic's argument that it will be prejudiced by such a continuance rings hollow given  
4 that approximately eight months elapsed between the first public announcement of the approval  
5 and launch of SenoRx's device and the filing of Hologic's motion. When Hologic finally filed  
6 its Complaint (timed to coincide with SenoRx's full commercial launch), it then took another  
7 month to file its preliminary injunction motion. In light of these facts, SenoRx would be  
8 severely prejudiced by a hearing date any sooner than May 12, 2008.

### 9 III. CONCLUSION

10 For the foregoing reasons, SenoRx respectfully requests that this Court continue the  
11 hearing on Hologic's Motion for Preliminary Injunction until at least May 12, 2008, with a  
12 corresponding briefing schedule, and order a reasonable amount of expedited discovery in this  
13 case. SenoRx also respectfully requests that this Court hold a scheduling conference on these  
14 matters as soon as practicable, but in no event later than February 28, 2008, the current deadline  
15 by which SenoRx must file its opposition to Hologic's motion.

16  
17 Dated: February 15, 2008

By: /s/ F.T. Alexandra Mahaney

F.T. Alexandra Mahaney

WILSON SONSINI GOODRICH & ROSATI

Bruce R. Genderson (*pro hac vice application pending*)

Aaron P. Maurer (*pro hac vice application pending*)

Rachel Shanahan Rodman (*pro hac vice application pending*)

Adam D. Harber (*pro hac vice application pending*)

WILLIAMS & CONNOLLY LLP

ATTORNEYS FOR DEFENDANT SENORX, INC.



CERTIFICATE OF SERVICE

U.S. District Court, Northern District of California,  
*Hologic, Inc. et al. v. SenoRx, Inc.*  
Case No. 08-CV-0133 MEJ

I, Kirsten Blue, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 12235 El Camino Real, Ste. 200, San Diego, CA, 92130.

On February 15, 2008, I served a copy(ies) of the following document(s):

**DEFENDANT SENORX INC.'S NOTICE OF MOTION AND MOTION FOR A  
CONTINUANCE OF THE HEARING ON PLAINTIFFS' PRELIMINARY  
INJUNCTION MOTION IN ORDER TO PERMIT EXPEDITED DISCOVERY**

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Henry C. Su (suh@howrey.com)	Attorneys for Plaintiffs
Katharine L. Altemus (altemusk@howrey.com)	HOLOGIC, INC. CYTYC
HOWREY LLP	CORPORATION and
1950 University Avenue, 4th Floor	HOLOGIC LP
East Palo Alto, CA 94303	
Telephone: (650) 798-3500	
Facsimile: (650) 798-3600	

Robert Ruyak (ruyakr@howrey.com)	Attorneys for Plaintiffs
Matthew Wolf (wolfm@howrey.com)	HOLOGIC, INC. CYTYC
Marc Cohn (cohenm@howrey.com)	CORPORATION and
HOWREY LLP	HOLOGIC LP
1229 Pennsylvania Avenue, NW	
Washington, DC 20004	
Telephone: (202) 783-0800	
Facsimile: (202) 383-6610	

☐ (BY MAIL) I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Wilson Sonsini Goodrich & Rosati, 12235 El Camino Real, Ste. 200, San Diego, CA. I am readily familiar with WSGR's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence with postage fully prepaid is deposited with the United States Postal Service the same day as it is placed for collection.

☐ (BY OVERNIGHT DELIVERY) I placed the sealed envelope(s) or package(s), to the addressee(s) noted above, designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Wilson Sonsini Goodrich & Rosati, 12235 El Camino Real, Ste. 200, San Diego, CA. I am readily familiar with WSGR's practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery the same day as the correspondence is placed for collection.

1 ☒ (BY CM/ECF) I caused such document(s) to be sent via electronic mail through the Case  
2 Management/Electronic Case File system with the U.S. District Court for the Northern  
3 District of California.

4 I declare under penalty of perjury under the laws of the United States that the above is true  
5 and correct, and that this declaration was executed on February 15, 2008.

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Kirsten Blue



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Attorneys for Defendant  
 SENORX, INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

	)	Case No. C08-00133-MEJ
HOLOGIC INC.,	)	
CYTYC CORP., and	)	<b>DECLARATION OF AARON P.</b>
HOLOGIC L.P.,	)	<b>MAURER IN SUPPORT OF</b>
	)	<b>DEFENDANT'S MOTION FOR A</b>
Plaintiffs,	)	<b>CONTINUANCE OF THE HEARING</b>
v.	)	<b>ON PLAINTIFFS' MOTION FOR</b>
	)	<b>PRELIMINARY INJUNCTION</b>
SENORX INC.,	)	<b>IN ORDER TO PERMIT EXPEDITED</b>
	)	<b>DISCOVERY</b>
Defendant.	)	

I, Aaron P. Maurer, declare that:

1. I am an attorney at the law firm of Williams & Connolly LLP, attorneys for Defendant SenoRx Inc. ("SenoRx") in the above-captioned action. I submit this declaration in support of SenoRx's Motion for a Continuance of the Hearing on Plaintiffs' Motion for Preliminary Injunction in Order to Permit Expedited Discovery. I am fully familiar with the

1 facts set forth in this declaration, either from personal knowledge or on the basis of documents  
2 that have been provided to me, and if called upon to testify, I could and would competently  
3 testify to the matters set forth herein.

4 2. Plaintiffs filed their Complaint in this matter on January 8, 2008.

5 3. On or about January 23, 2008, SenoRx's counsel requested a 30-day  
6 extension to answer the Complaint, which the Plaintiffs granted.

7 4. Bruce R. Genderson, SenoRx's lead counsel, identified an impending trial  
8 in another case as one reason why the extension was necessary.

9 5. At this time, the Plaintiffs made no mention of their preparation of and  
10 plans to file a motion for preliminary injunction.

11 6. Subsequent to the negotiation of this extension, and almost one month after  
12 the Complaint was filed, the Plaintiffs filed a Motion for Preliminary Injunction.

13 7. In light of Mr. Genderson's schedule and the amount of work that will be  
14 required to respond to the Plaintiffs' Motion for Preliminary Injunction, I contacted Plaintiffs'  
15 counsel and attempted to negotiate an extension of time and a stipulation regarding expedited  
16 discovery. Attached hereto as Exhibit A is a true and correct copy of the email chain between  
17 myself and Marc Cohn. *See Ex. A.*

18 8. During these discussions, I proposed a schedule whereby SenoRx's  
19 responsive brief would be due at the end of March 2008, the Plaintiff's reply due in mid- to late-  
20 April, and the hearing on the motion would occur in the first or second week of May. *See id.*

21 9. The Plaintiffs rejected this schedule, insisting that the hearing on the  
22 Motion for Preliminary Injunction could take place no later than April 17, 2008, unless SenoRx  
23 withdrew its product from the market. *See id.*

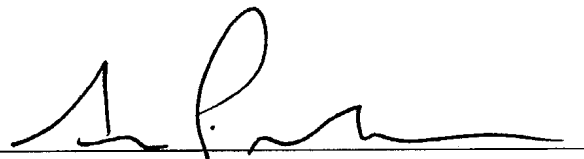
24 10. The Plaintiffs also indicated that they would agree to only a very limited  
25 amount of expedited discovery: six interrogatories, ten document requests, and two depositions  
26 (one of Glen Magnuson, the Senior Director of Product Marketing for Hologic's Interventional  
27 Breast Solutions Unit, and one of a corporate designee). *See id.*

1 11. Based on the circumstances of this case and the complexity of the questions  
2 at issue, SenoRx is not in a position to agree to either the schedule or the discovery limitations  
3 offered by the Plaintiffs.

4 12. Attached hereto as Exhibit B is a true and correct copy of a press release,  
5 *SenoRx Reports Second Quarter 2007 Results*, dated August 14, 2007.

6  
7 I declare under penalty of perjury that the foregoing is true and correct.

8  
9 Dated: February 15, 2008

10  
11   
12 Aaron P. Maurer  
13 Williams & Connolly LLP  
14 Attorney for Defendant SenoRx, Inc.

# **EXHIBIT**

# **A**

-----Original Message-----

From: Cohn, Marc [mailto:CohnM@howrey.com]  
Sent: Friday, February 15, 2008 10:12 AM  
To: Maurer, Aaron  
Subject: RE: Hologic v SenoRx PI

Aaron,

Hologic does not agree that SenoRx can share confidential information in the Preliminary Injunction papers with anyone other than on an outside counsel eyes only basis and with SenoRx's Chief Technology Officer, as stated in my previous email. If you wish to disclose the designated confidential information to your experts, please disclose the names and curriculum vitae of those experts to us immediately so that we can determine whether they may review the confidential materials. We cannot agree to allow you to show those materials to experts of whose identity we are unaware.

Furthermore, we believe an April 17, 2008 hearing date that we proposed gives SenoRx ample time for the discovery it needs. A longer schedule is not appropriate given the ongoing irreparable harm inflicted by SenoRx's infringement on my client. Regarding the Xoft case, most of the Xoft pleadings are publicly available. Hologic will agree to promptly provide any confidential materials from that case to SenoRx provided that Xoft permits such disclosure. Since SenoRx seeks the discovery, it is SenoRx's burden to contact Xoft and obtain the necessary consent for disclosure of Xoft's confidential materials to SenoRx.

-Marc

-----Original Message-----

From: Maurer, Aaron [mailto:AMaurer@wc.com]  
Sent: Wednesday, February 13, 2008 7:14 PM  
To: Cohn, Marc  
Subject: RE: Hologic v SenoRx PI

February 13, 2008

Dear Marc,

The schedule and discovery limitations that you propose below will not work.

This is a complicated case. To name a few issues: Hologic relies heavily in its motion for a preliminary injunction on prior rulings in the Xoft case with which Hologic has intimate knowledge, but for which SenoRx has not even been able to retrieve all of the pleadings. Hologic makes numerous allegations regarding supposed statements and market share that need to be investigated and responded to. Hologic apparently has licensed a competitor to sell its balloon catheter on the market under the patents-at-issue, but under what terms SenoRx does not know. And Hologic has not yet taken a position as to whether its own device falls under the patents, and what the relevant conception date(s) is. Clearly, these are all relevant to the question of injunctive relief, and discovery of these issues (and others) is needed in order for SenoRx to respond fully to Hologic's motion for a preliminary injunction. Additionally, there will be questions for experts to address with respect to validity and infringement, which requires time.

While Hologic has known about SenoRx's device for quite some time, and apparently has

taken its time to prepare its motion for preliminary injunction, Hologic's refusal to grant a reasonable extension with reasonable discovery to SenoRx leaves us no choice but to go to the Court on this issue.

If your client reconsiders and wishes to grant SenoRx the schedule discussed, we are of course open to further discussion. Please let me know.

On another issue, SenoRx is puzzled by the designation of the information on p.20 of the PI motion as confidential, and the redaction (and request to seal) such information. Why are the allegations of SenoRx's pricing and what SenoRx's representatives allegedly are saying

-- which Hologic admittedly learned about from third-parties -- confidential? Please reconsider its designation.

Furthermore, in order to prepare our case, we must share that information with our client and experts. Accordingly, unless I hear otherwise from you: 1) we intend to share the information on p.20 and the corresponding paragraphs of the accompanying declarations with our experts, with the understanding that the experts will treat the information as confidential; and 2) we intend to inquire with our client as to the allegations on p.20.

For the time being, in the absence of a protective order more specifically addressing the issue or agreement regarding the information, we will not share the information from p.6 regarding the alleged development and commercialization costs of Hologic's device with our experts.

Best regards,

Aaron

Aaron P. Maurer  
Williams & Connolly, LLP  
725 12th St. NW  
Washington, DC 20005  
202-434-5282 (direct)  
202-434-5029 (fax)

-----Original Message-----

From: Cohn, Marc [mailto:CohnM@howrey.com]  
Sent: Wednesday, February 13, 2008 11:57 AM  
To: Maurer, Aaron  
Subject: RE: Hologic v SenoRx PI

Aaron:

Per your email below, I write to address the issues we discussed earlier this week.

First, Hologic is willing to allow SenoRx's Chief Technology Officer to view the confidential materials filed in connection with Hologic's Motion for Preliminary Injunction (the "Motion"). No other SenoRx principals may have access to those materials.

Second, we will send you a draft protective order for your review shortly. It will contain two tiers of confidentiality, as we discussed.

Third, Hologic is willing to reschedule the hearing on the Motion to any date in the future provided that SenoRx stipulates that it will suspend sales of its Contura Multi-Lumen Balloon until the date of the hearing. Each and every day that the Contura is on the market irreparably harms my client, which is why the Motion was filed. If SenoRx is unwilling to agree to this, then we propose alternatively that the hearing be rescheduled to April 17, 2008 provided that (A) SenoRx propounds all of its discovery by February 20, 2008; (B) SenoRx limits its discovery to 6 interrogatories, 10 document requests, and 2 depositions (i.e. one of Mr. Magnuson and one of a corporate designee); and (C) SenoRx stipulates that Hologic is entitled to commensurate discovery from SenoRx.

Fourth, as to your questions regarding conception and reduction to practice and whether

the MammoSite practices the asserted patents, Hologic will answer those questions in the course of discovery.

Finally, Hologic agrees that the case should be heard by Judge Whyte. We will prepare a joint pleading in this regard and send it to you for review shortly.

Please let me know if you want to discuss these matters further.

Thank you,  
Marc Cohn  
HOWREY LLP

-----Original Message-----

From: Maurer, Aaron [mailto:AMaurer@wc.com]  
Sent: Wednesday, February 13, 2008 11:17 AM  
To: Cohn, Marc  
Subject: Hologic v SenoRx PI

February 13, 2008

Dear Marc,

I write in furtherance of our conversation on Monday, February 11, 2008. In that conversation, we discussed several issues important to the swift and orderly resolution of the Hologic motion for a preliminary injunction.

First, we discussed SenoRx's willingness to consent to relate this case to the Xoft case and have the matter heard by Judge Whyte, to which end I suggested we file a consent motion and to which course of action you indicated that Hologic likely would agree.

Second, I discussed with you the fact that Hologic filed certain of its PI papers under seal, and that my client -- or certain representatives of my client -- would need to see those papers in order to ensure that SenoRx can adequately mount a defense to all the allegations in the Hologic papers. I suggested that we could either deal with this on a temporary basis with respect to these papers or that we could come to some more permanent agreement and propose a protective order to the Court for purposes of this action. You told me that there might be some issue with respect to SenoRx internal personnel to the extent that they were involved in prosecution activities, but that you were going to discuss with your client and that you had a model order from the Xoft case (two-tier) that you would forward to me. For SenoRx's part, I told you we would need to have access by at least our Chief Technical Officer and our Chief Executive Officer.

Third, we discussed an extension to the briefing and response schedule, and some expedited discovery. As you know from our conversations with you regarding the extension you granted to SenoRx to answer the Hologic complaint, Bruce Genderson, SenoRx's lead on this case, will be out of town for trial starting this week and continuing through the first half of March. The extension also is required so that SenoRx can take discovery on the claims and allegations that Hologic set forth in its motion papers.

With respect to this initial discovery, I told you that we certainly would need the pleadings and filings from the Xoft case that Hologic relies on in its motion, documents relating to the conception and invention of the claims of the patents, and Hologic's contentions as to what conception date the patent claims at issue are due, as well as whether you contend the Mammosite device is covered by the asserted claims (and if so, how). As I mentioned, those categories of information were not exhaustive, as we also will request relevant contentions and documents regarding, e.g., whether or not the Xoft device is covered by the asserted claims, the terms of the Xoft license and settlement, and other documents and information regarding the allegations in Hologic's motion. I proposed that we accomplish this through some limited set of discovery requests (Requests for Production, Interrogatories, depositions).

I also discussed with you a proposed schedule whereby we would (if the Court's schedule allows) propose a hearing in the first or second week of May, and that SenoRx's responsive brief due at the end of March, and Hologic's reply due in mid-to-late April.

You told me that Hologic's lead counsel was in Germany, but that you would circle back



with your team and get back to me on these issues. I told you that we needed resolution as soon as possible, as we were going to need to file a motion for an extension and discovery if the parties could not reach agreement. I asked you to commit to getting back to me -- one way or the other -- by yesterday (Tuesday) and you told me that you would try and did not think that would be a problem.

As of yet I have not heard back from you. Can you please let me know where things stand on the issues we discussed?

Best regards,

Aaron P. Maurer  
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202-434-5029 (fax)

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NOTICE:

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# **EXHIBIT**

# **B**



**Press Release**

**SenoRx Reports Second Quarter 2007 Results**  
**Revenue and Gross Margin Post Continued Strong Growth**

ALISO VIEJO, Calif., August 14 – SenoRx, Inc. (NASDAQ: SENO) today reported financial results for its second quarter ended June 30, 2007. Revenue for the quarter increased 28 percent to \$8.1 million, compared with \$6.3 million in the second quarter of 2006. Gross profit increased 41.5 percent to \$4.6 million, or 57.0 percent of revenue, up from \$3.3 million, or 51.7 percent of revenue, in the second quarter of 2006.

SenoRx reported an operating loss for the second quarter of \$2.6 million, compared with \$2.5 million in the same period last year. The operating loss for the quarter included additional administrative expenses of approximately \$161,000 incurred during the period associated with becoming a public company and stock-based compensation expense of \$563,000, compared with \$345,000 in the second quarter of 2006.

Net loss for the second quarter of 2007 declined significantly to \$2.1 million or 15 cents per share, compared to \$6.5 million or \$2.87 per share for the second quarter of 2006. Contributing to the reduction in net loss for the second quarter was a significant swing to net interest income from net interest expense resulting from the IPO proceeds and a non-cash positive change in fair value of the liability associated with a warrant issued in connection with the December 2006 subordinated note. In addition, there was an increase in the weighted average shares outstanding resulting from the IPO and the conversion of preferred stock into common stock in connection with the IPO.

"SenoRx reported another solid quarter with continued strong revenue growth, led by a 53 percent increase in biopsy disposable revenues over the same period last year," said Lloyd Malchow, SenoRx President and Chief Executive Officer. "In addition, major milestones were achieved during the second quarter with the FDA 510(k) clearance of our new Radiation Balloon and our first commercial sales of this product. Importantly, we also continued to expand our gross margin, which increased more than 5 percentage points from the second quarter a year ago. The improvement was driven by increased product sales resulting from continued growth in the installed base of EnCor systems, combined with improved efficiencies in the production of our disposable biopsy probe and allocating manufacturing overhead over an increased revenue base."

For the first six months of 2007, SenoRx posted revenues of \$15.8 million, an increase of 30 percent compared with \$12.2 million for the same period in 2006. Gross profit grew 46 percent to \$8.8 million from \$6.0 million in the first six months of last year. Net loss for the first half of 2007 decreased to \$4.2 million compared with \$8.8 million for the same period a year ago.

### 2007 Outlook

SenoRx is encouraged by the continued progress and significant achievements in the second quarter of 2007 and remains focused on executing its strategic plan. With its current product offering and strong product pipeline, we believe SenoRx is well positioned to become a leader in both the diagnostic and therapeutic breast care market. Management continues to expect full-year 2007 revenues to be in a range of \$33 to \$35 million.

### About SenoRx

SenoRx (NASDAQ: SENO), which completed its initial public offering of common stock in April 2007, develops, manufactures and sells minimally invasive medical devices used by breast care specialists for the diagnosis of breast cancer. SenoRx's field sales organization serves over 1,000 breast diagnostic and treatment centers in the United States and Canada. With 17 products that have already received FDA 510(k) clearance across the continuum of breast care, SenoRx is developing additional minimally invasive products for diagnosis and treatment of breast cancer. For more information, visit the company's website at [www.senorx.com](http://www.senorx.com).

### Forward-Looking Statements

This press release contains forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995. Specifically, statements concerning SenoRx's ability to successfully expand selling and promotional activities, to fully commercially launch its Radiation Balloon product, to successfully develop and introduce other products, and to become a leader in the diagnostic and therapeutic breast-care market, as well as financial guidance for fiscal year 2007, are forward-looking statements within the meaning of the Safe Harbor. Forward-looking statements are based on management's current, preliminary expectations and are subject to risks and uncertainties, which may cause SenoRx's actual results to differ materially from the statements contained herein. SenoRx's second quarter June 30, 2007 financial results, as discussed in this release, are preliminary and unaudited, and subject to adjustment. Further information on potential risk factors that could affect SenoRx's business and its financial results are detailed in its prospectus dated March 29, 2007 and its most recent quarterly report on Form 10-Q, in each case as filed with the Securities and Exchange Commission. Undue reliance should not be placed on forward-looking statements, especially guidance on future financial performance, which speaks only as of the date they are made. SenoRx undertakes no obligation to update publicly any forward-looking statements to reflect new information, events or circumstances after the date they were made, or to reflect the occurrence of unanticipated events.

**SENORX, INC.**  
**CONDENSED BALANCE SHEETS**  
(Unaudited)

	<u>June 30, 2007</u>	<u>December 31, 2006</u>
<b>ASSETS</b>		
Current Assets:		
Cash and cash equivalents	\$ 44,541,309	\$ 7,412,986
Accounts receivable, net of allowance for doubtful accounts of \$113,169 and \$120,000, respectively	4,477,568	4,241,307
Inventory	5,419,672	4,988,695
Prepaid expenses and deposits	456,087	220,659
Total current assets	54,894,636	16,863,647
Property and equipment, net	1,136,844	1,100,599
Other assets, net of accumulated depreciation of \$446,653, and \$539,602, respectively	433,146	2,017,079
<b>TOTAL</b>	<u>\$ 56,464,626</u>	<u>\$ 19,981,325</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>		
Current Liabilities:		
Accounts payable	\$ 1,846,838	\$ 4,122,477
Accrued expenses, including accrued employee compensation of \$815,711 and \$507,829, respectively	2,297,351	2,109,226
Deferred revenue—current	66,850	36,050
Current portion of long-term debt	4,924,249	3,209,621
Total current liabilities	9,135,288	9,477,374
Long-term debt—less current portion	8,752,676	10,596,147
Warrant liability	—	1,529,250
Total long-term liabilities	8,752,676	12,125,397
Convertible promissory notes (at fair value)	—	11,960,000
Commitments and Contingencies (Note 12)		
Stockholders' Equity (Deficit):		
Series A convertible preferred stock—\$1.00 par value; 3,000,000 shares authorized, issued and outstanding (2007 and 2006) (aggregate liquidation value of \$3,000,000)	—	3,000,000
Series B convertible preferred stock—\$2.50 par value; 3,532,040 shares authorized; 3,523,040 issued and outstanding (2006) (aggregate liquidation value of \$8,807,600)	—	8,807,600
Series C convertible preferred stock—\$1.96 par value; 19,500,000 shares authorized; 17,861,899 (2006) issued and outstanding (aggregate liquidation value of \$35,009,323)	—	35,009,323
Common stock, \$0.001 par value—100,000,000 shares authorized; 17,091,556 (2007) and 2,371,002 (2006) issued and outstanding	17,091	2,371
Additional paid-in capital	108,375,879	5,262,394
Deferred compensation	(35,469)	(126,658)
Accumulated deficit	(69,780,839)	(65,536,476)
Total stockholders' equity (deficit)	38,576,662	(13,581,446)
<b>TOTAL</b>	<u>\$ 56,464,626</u>	<u>\$ 19,981,325</u>

**SENORX, INC.**  
**CONDENSED STATEMENTS OF OPERATIONS**  
(Unaudited)

	<b>Three Months Ended June 30,</b>		<b>Six Months Ended June 30,</b>	
	<b>2007</b>	<b>2006</b>	<b>2007</b>	<b>2006</b>
Net revenues	\$ 8,121,285	\$ 6,324,875	\$ 15,821,361	\$ 12,162,023
Cost of goods sold	3,490,011	3,054,140	7,027,355	6,140,289
Gross profit	4,631,274	3,273,735	8,794,006	6,021,734
Operating expenses:				
Selling and marketing	4,430,998	3,947,727	8,731,491	7,099,560
Research and development	1,646,665	1,312,682	3,114,869	2,442,371
General and administrative	1,104,652	512,629	1,887,188	1,159,155
Total operating expenses	7,182,315	5,773,038	13,733,548	10,701,086
Loss from operations	(2,551,041)	(2,499,303)	(4,939,542)	(4,679,352)
Interest expense	449,865	216,127	926,735	381,239
Change in fair value of convertible promissory notes and warrant valuation	(305,047)	3,840,000	(990,875)	3,840,000
Interest income	(560,980)	(56,515)	(631,039)	(60,708)
Loss before provision for income taxes	(2,134,879)	(6,498,915)	(4,244,363)	(8,839,883)
Provision for income taxes	—	3,000	—	5,000
Net loss	\$ (2,134,879)	\$ (6,501,915)	\$ (4,244,363)	\$ (8,844,883)
Net loss per share – basic and diluted	\$ (0.15)	\$ (2.87)	\$ (0.45)	\$ (4.06)
Weighted average shares outstanding - basic and diluted	13,900,529	2,200,205	9,388,107	2,180,145

**REVENUES BY PRODUCT CLASS**  
(Unaudited)

	<b>Three Months Ended June 30,</b>		<b>Six Months Ended June 30,</b>	
	<b>2007</b>	<b>2006</b>	<b>2007</b>	<b>2006</b>
Biopsy disposable products	\$ 4,021,597	\$ 2,635,067	\$ 7,541,181	\$ 4,943,678
Biopsy capital equipment products	620,401	409,434	1,101,229	725,464
Diagnostic adjunct products	3,454,190	3,283,374	7,153,854	6,492,881
Therapeutic disposables	25,097	-	25,097	-
Total	\$ 8,121,285	\$ 6,327,875	\$ 15,821,361	\$ 12,162,023

CONTACT: SenoRx, Inc.  
Lila Churney, Director of Investor Relations  
949-362-4800 x132



CERTIFICATE OF SERVICE

U.S. District Court, Northern District of California,  
*Hologic, Inc. et al. v. SenoRx, Inc.*  
Case No. 08-CV-0133 MEJ

I, Kirsten Blue, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 12235 El Camino Real, Ste. 200, San Diego, CA, 92130.

On February 15, 2008, I served a copy(ies) of the following document(s):

**DECLARATION OF AARON P. MAURER IN SUPPORT OF DEFENDANT'S MOTION  
FOR A CONTINUANCE OF THE HEARING ON PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION IN ORDER TO PERMIT EXPEDITED DISCOVERY**

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Henry C. Su (suh@howrey.com)	Attorneys for Plaintiffs
Katharine L. Altemus (altemusk@howrey.com)	HOLOGIC, INC. CYTYC
HOWREY LLP	CORPORATION and
1950 University Avenue, 4th Floor	HOLOGIC LP
East Palo Alto, CA 94303	
Telephone: (650) 798-3500	
Facsimile: (650) 798-3600	

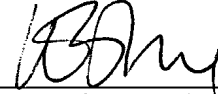
Robert Ruyak (ruyakr@howrey.com)	Attorneys for Plaintiffs
Matthew Wolf (wolfm@howrey.com)	HOLOGIC, INC. CYTYC
Marc Cohn (cohenm@howrey.com)	CORPORATION and
HOWREY LLP	HOLOGIC LP
1229 Pennsylvania Avenue, NW	
Washington, DC 20004	
Telephone: (202) 783-0800	
Facsimile: (202) 383-6610	

☐ (BY MAIL) I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Wilson Sonsini Goodrich & Rosati, 12235 El Camino Real, Ste. 200, San Diego, CA. I am readily familiar with WSGR's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence with postage fully prepaid is deposited with the United States Postal Service the same day as it is placed for collection.

☐ (BY OVERNIGHT DELIVERY) I placed the sealed envelope(s) or package(s), to the addressee(s) noted above, designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Wilson Sonsini Goodrich & Rosati, 12235 El Camino Real, Ste. 200, San Diego, CA. I am readily familiar with WSGR's practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery the same day as the correspondence is placed for collection.

1 ☒ (BY CM/ECF) I caused such document(s) to be sent via electronic mail through the Case  
2 Management/Electronic Case File system with the U.S. District Court for the Northern  
3 District of California.

4 I declare under penalty of perjury under the laws of the United States that the above is true  
5 and correct, and that this declaration was executed on February 15, 2008.

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Kirsten Blue

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

HOLOGIC INC.,  
CYTYC CORP., and  
HOLOGIC L.P.,

Plaintiffs,

v.

SENORX INC.,

Defendant.

Case No. C08-00133-MEJ

**[PROPOSED] ORDER ON MOTION  
FOR A CONTINUANCE OF THE  
HEARING ON PLAINTIFFS'  
PRELIMINARY INJUNCTION  
MOTION IN ORDER TO PERMIT  
EXPEDITED DISCOVERY**

**[PROPOSED] ORDER**

Upon consideration of (1) Defendant's Motion for a Continuance of the Hearing on Plaintiffs' Preliminary Injunction Motion in Order to Permit Expedited Discovery, (2) the declaration of Aaron P. Maurer in support of this Motion, and (3) all other relevant pleadings and evidence, as well as oral argument,

IT IS HEREBY ORDERED THAT the hearing on Plaintiffs' Motion for Preliminary Injunction be continued until May 12, 2008.

IT IS FURTHER ORDERED THAT SenoRx and Hologic each be allowed expedited discovery under Fed. R. Civ. P. 26 in the form and with the limitations set forth by this Court.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
U.S. Magistrate Judge Maria-Elena James

CERTIFICATE OF SERVICE  
U.S. District Court, Northern District of California,  
*Hologic, Inc. et al. v. SenoRx, Inc.*  
Case No. 08-CV-0133 MEJ

I, Kirsten Blue, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 12235 El Camino Real, Ste. 200, San Diego, CA, 92130.

On February 15, 2008, I served a copy(ies) of the following document(s):

**[PROPOSED] ORDER ON MOTION FOR CONTINUANCE OF THE HEARING  
ON PLAINTIFFS' PRELIMINARY INJUNCTION MOTION IN ORDER  
TO PERMIT EXPEDITED DISCOVERY**

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Henry C. Su (suh@howrey.com)	Attorneys for Plaintiffs
Katharine L. Altemus (altemusk@howrey.com)	HOLOGIC, INC. CYTYC
HOWREY LLP	CORPORATION and
1950 University Avenue, 4th Floor	HOLOGIC LP
East Palo Alto, CA 94303	
Telephone: (650) 798-3500	
Facsimile: (650) 798-3600	

Robert Ruyak (ruyakr@howrey.com)	Attorneys for Plaintiffs
Matthew Wolf (wolfm@howrey.com)	HOLOGIC, INC. CYTYC
Marc Cohn (cohenm@howrey.com)	CORPORATION and
HOWREY LLP	HOLOGIC LP
1229 Pennsylvania Avenue, NW	
Washington, DC 20004	
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2 Management/Electronic Case File system with the U.S. District Court for the Northern  
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5 and correct, and that this declaration was executed on February 15, 2008.

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Kirsten Blue